

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LUIS JORGE,

Plaintiff,

v.

PABLO MUNOZ, *et al.*,

Defendants.

Civil Action No. 21-369 (SDW) (LDW)

ORDER

May 24, 2022

WIGENTON, District Judge.

Before this Court is Magistrate Judge Leda D. Wettre's ("Judge Wettre") Report and Recommendation, dated April 26, 2022, which recommends that this Court grant in part and deny in part Defendants Pablo Munoz and Karen Fragale's (collectively, "Defendants") Motion to Dismiss *pro se* Plaintiff Luis Jorge's ("Plaintiff") Complaint. (D.E. 53 ("R&R").) Defendants move pursuant to Federal Rule of Civil Procedure ("Rule") 37(b)(2), based on Plaintiff's failure to comply with Court Orders, and pursuant to Rule 37(d), for Plaintiff's failure to attend his noticed depositions. (D.E. 50.) Judge Wettre recommends that this Court dismiss Plaintiff's Complaint without prejudice and without assessing costs or fees, pursuant to Rules 37(b)(2), 37(d), and 41(b). (R&R at 6.) Defendants filed objections on May 10, 2022, asking this Court to dismiss the case with prejudice and assess costs and fees, but otherwise adopt the R&R. (D.E. 55.)¹ Plaintiff filed

¹ This Court is sympathetic to Defendants' concerns in this matter but agrees with Judge Wettre that imposing monetary sanctions is inappropriate given Plaintiff's financial situation as an indigent litigant proceeding *in forma pauperis*. (See R&R at 5–6.) Dismissal with prejudice is also inappropriate where Plaintiff is *pro se* and asserts claims of unknown merit. (See *id.* at 6.) Nonetheless, in order to protect Defendants from bearing additional expenses in a

objections on May 11, 2022, asking this Court to deny Defendants' motion and grant summary judgment in his favor pursuant to Rule 56. (D.E. 56.)² This Court has reviewed the reasons set forth by Judge Wettre in the R&R, the parties' objections, and the other documents in this matter. Based on the foregoing, and for good cause shown, it is hereby

ORDERED that Judge Wettre's R&R is **ADOPTED** as the conclusions of law of this Court,

ORDERED that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**, and

ORDERED that if Plaintiff refiles this action and fails to comply with Court Orders or attend noticed depositions, this Court will assess fees and costs.

SO ORDERED.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Hon. Leda D. Wettre, U.S.M.J.
Parties

repeat situation, this Court will assess fees and costs if Plaintiff refiles this action and fails to comply with future Court Orders or attend noticed depositions. Plaintiff should take note and proceed accordingly.

² Plaintiff's objections are dated May 7, 2022. (D.E. 56 at 1.) Plaintiff also requested summary judgment in a separate letter that was dated April 22, 2022, and filed on May 10, 2022. (D.E. 54.) This Court will deny Plaintiff's request because, *inter alia*, Plaintiff's repeated failures to provide deposition testimony deprived Defendants of the opportunity to develop the factual record and prepare their defenses.